IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.393 OF 2003

Unitech Machines Limited. ... Petitioners

vs.

Indian Oil Corporation Ltd. .... Respondents.

Mr.V.S.Kokitkar with R.P.Joshi, for Petitioners.

Mr.Gaurav Joshi i/b. R.M.G.Law Associates, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 20th September,2005

P.C.:-

1. By this petition, the petitioners challenge the Award made by the sole Arbitrator. Perusal of the Award shows that there were only 2 claims before the learned Arbitrator. The first claim of the petitioners was that the respondents were not justified in deducting the amount of liquidated damages from the amount of the final bill and the second

claim was that the petitioners were entitled to refund of the amount of security deposits. By the Award, the second claim was allowed and the respondents have been directed to refund the amount of security deposit.

2. So far as the first claim is concerned, the Arbitral Tribunal has held that the deduction of the liquidated damages has been made in accordance with the terms of the contract. It has been held that the extension of time was sought by the petitioners till 2.6.1999, but the respondents granted extension of time till 30.4.1999. But the actual work was completed on 15.11.1999 and therefore, in terms of clause 6 (a) of the terms of the Contract, the respondents deducted the amount of liquidated damages. The learned Counsel appearing for the petitioners urged that the learned Arbitrator has committed error in holding that the time was the essence of the contract. Perusal of the statement of claim shows that not only it was not the case of the petitioners in the statement of claim that the time is not the essence of the contract, but the petitioners before the Arbitral Tribunal also went on explaining that the petitioners were justified in completing the work by 15.11.1999. The conduct of the petitioners of explaining the delay in completing the work and not claiming in the statement of claim that the time is not the essence of the contract, in my opinion, leads one to the conclusion that the time was the essence of the contract. Perusal

of clause 6(a) of the Contract also shows that the parties intended that the time would be the essence of the contract. So also the clause 6(a) of the contract entitles the respondents to compensation for delay in completing the work. In short, I do not find any patent error committed by the learned Arbitrator in making the Award. The petition is devoid of any substance. Hence, it is dismissed. The petitioners to pay costs of the petition to the Respondents as incurred by the Respondents.